IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 1ST AUGUST 2007 / 10TH SRAVANA 1929

RCRev..No. 242 of 2007()

RCA.130/2003 of ADDL.DISTRICT COURT (ADHOC)-II, THALASSERY
RCP.18/2002 of MUNSIFF'S COURT, PAYYANNUR
.....

REVN. PETITIONER/APPELLANT/PETITIONER

MEETHALE VEETTIL KUNHAPPAN,
S/O. PATTI AMMA, AGED 71 YEARS,
RESIDING AT ERAMAM AMSOM, MADAMANGALAM DESOM,
TALIPARAMBA TALUK.

BY ADV. SRI.V.RAJAGOPAL

RESPONDENT: RESPONDENT/RESPONDENT

MAVILA VALAPPIL KANNAN, S/O. CHIRUTHAI
AMMA, AGED 66 YEARS, RESIDING AT ERAMAM AMSOM,
MADAMANGALAM DESOM, TALIPARAMBA TALUK.

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 01/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.BALAKRISHNAN NAIR &

K.T.SANKARAN, JJ.

R.C.R. NO.242 of 2007 -D

Dated 1st August, 2007.

ORDER

Sankaran, J.

Landlord is the revision petitioner. The Rent Control Petition was filed under Sections 11(2)(b) and 11(3) of the Kerala Buildings (Lease and Rent Control) Act (hereinafter referred to as "the Act"). The ground under Section 11(2)(b) does not survive for consideration, as the entire arrears of rent have been paid during the pendency of the proceedings.

2. The bona fide need put forward by the landlord is that he requires the petition schedule room for conducting a Fruit and Vegetable stall. At the time of filing the petition, he was aged 68 years. The tenant disputed the bona fide need put forward by the landlord. He contended that the bona fide need put forward by the landlord is only a ruse to evict him. It is pointed out by the tenant that he was conducting business in another building belonging to the landlord and he was

evicted from that building as per the order in RCP No.8/91, on the ground of reconstruction. He was accommodated in the present building thereafter on 19.2.1992, fixing a monthly rent of Rs.100/-. It was pointed out that the landlord is a very rich man and that he has several buildings in his possession. It was also pointed out that his wife and son are also doing business in the rooms in the same building belonging to him.

3. Before the Rent Control Court, the landlord was examined as PW1 and Exts.A1 to A19 were marked. The tenant was examined as RW1 and Exts.B1 to B4 were marked.

4. It has come out in evidence that the landlord was conducting business in a rented building and he stopped the same in 1974 and surrendered the premises to its owner. It has also come out that the landlord has several buildings in his possession. He stopped the business 30 years before the filing of the petition. It has further come out in evidence that his wife is employed and that she is also conducting business in the building belonging to him. His son is conducting the trade of Soda manufacturing in one of the rooms in the main building. The sound financial status of the landlord was brought out in evidence.

5. The tenant disputed the bona fide need put forward by the landlord, relying on three documents, which came into existence in 2001. Ext.A2 lawyer notice was issued by the landlord on 3.12.2001 and a few months before the sending of the said notice, the landlord had entered into lease agreements with respect to three shop rooms, as per Exts.A9 to A11 lease deeds. Ext.A9 is the lease deed dated 1.6.2001 executed by one Alikutty. Ext.A10 dated 21.8.2001 is the lease deed executed by the son of the landlord in respect of another room, fixing a monthly rent of Rs.300/-, even without mentioning in the lease deed the relationship between the parties. Ext.P11 dated 7.9.2001 was executed by the wife of the landlord in favour of her husband in respect of a room in the same building. The tenant contended that Ext.A11 is a sham document and the wife of the landlord is not occupying that room.

6. The Rent Control Court as well as the Appellate Authority considered Exts.A9 to A11, in the light of the evidence available in the case and held that the bona fide need put forward by the landlord is not genuine and that he has no real intention to conduct any business in the petition schedule building. The facts and circumstances

of the case and the documentary and oral evidence available in the case were taken note of by both the authorities and a finding of fact was recorded by them, arriving at the conclusion that the bona fide need put forward by the landlord is not genuine.

7. It was also pointed out by the tenant that Exts.B1(a) and B1(b) building tax assessment registers produced in the case would show that the landlord is having in his possession other buildings. The authorities below came to the conclusion that the evidence would indicate that the landlord is in possession of other buildings and that he has failed to show sufficient reasons as contemplated in the first proviso to Section 11(3) of the Act. These are findings of fact arrived at, based on the evidence and materials produced in the case and this Court would not be justified in interfering with the concurrent findings, exercising the jurisdiction under Section 20 of the Act.

8. The learned counsel for the petitioner submitted that the tenant has admitted in evidence that there are no other buildings belonging to the landlord lying vacant and available in his possession. He referred to the evidence of RW1, which is extracted in ground B of

the revision. We have carefully considered the submissions made by the learned counsel for the petitioner. The appellate authority has also considered this evidence and held that a stray admission by the tenant cannot be relied on, in the light of the overwhelming documentary evidence produced by him to show that the landlord is having other buildings in his possession.

For the foregoing reasons, we find that no interference is called for in this revision. In the result, the revision lacks merit and it is accordingly dismissed.

K. BALAKRISHNAN NAIR,JUDGE

K.T.SANKARAN, JUDGE.

Nm/